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JUN 08 2009

In re Application of
Charles Mason
Application No. 10/599,070
Filed: September 19, 2006
Attorney Docket No. AP113-06

: **OFFICE OF PETITIONS**
: DECISION ON PETITION

This is a decision on the renewed petition, filed May 4, 2009, which is being treated as a petition under 37 CFR 1.181, requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note 37 CFR 1.181(f)*. The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

On March 11, 2008, the Office mailed a non-final Office action, which set a three month shortened statutory period to reply. The application became abandoned on June 12, 2008, for failure to submit a timely response to the non-final Office action. On October 28, 2008, the Office mailed a Notice of Abandonment.

On renewed petition, petitioner has provided a letter, which states that, a certified copy of New Zealand Patent No. 549918 has been forwarded to the Office. However, petitioner has still failed to provide evidence that a timely complete reply was submitted in response to the non-final Office action on March 11, 2008. To the extent petitioner maintains that the certified copy is part of the response, no evidence has been presented to show that this reply was submitted before June 11, 2008. It should be noted that the record does not show that the Office is in receipt of the certified copy of the New Zealand patent.

Pursuant to 37 CFR 1.111, in order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to the Office action. The reply by the applicant or patent owner must be reduced to a writing which distinctly and specifically points out the supposed errors in the examiner's action and must reply to every ground of objection and rejection in the prior Office action. The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. If the reply is with

respect to an application, a request may be made that objections or requirements as to form not necessary to further consideration of the claims be held in abeyance until allowable subject matter is indicated. The applicant's or patent owner's reply must appear throughout to be a bona fide attempt to advance the application or the reexamination proceeding to final action.

The record is devoid of any evidence that petitioner has ever presented a reply to the Office action within the meaning of 37 CFR 1.111.

In order to establish that a reply was previously submitted, petitioner must submit a copy of the previously submitted reply and either a stamped post card receipt pursuant to MPEP 503, a certificate of transmission pursuant to 37 CFR 1.8, or an electronic acknowledgement receipt.

As such the holding of abandonment cannot be withdrawn.

If petitioner cannot supply the evidence necessary to withdraw the holding of abandonment, or simply does not wish to, petitioner should consider filing a petition under 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the \$810 petition fee.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
 Commissioner for Patents
 P. O. Box 1450
 Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
 Customer Service Window, Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

By facsimile: (571) 273-8300
 Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at
(571) 272-3215.

Charlema Grant

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Office of Petitions